IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 672 OF 1989

WITH

CRIMINAL APPEAL NO. 673 OF 1989

The State of Maharashtra ..Appellant

versus

1. Bhoju @ Bhajanlal Jethanand Aswani, Age 22 years, Camp No.3, Barrack No. 824/6 Section No. 17, Ulhasnagar Dist : Thane

2. Manu Radhamal Basantani age 28 years, R/o. Camp No. 3, Barrack NO. 824, Section No.17 Ulhasnagar, Dist: Thane

3. Aku @ Nand Tekchand Makhija age 23 years, R/o. Camp No.3 Barrack No.824/8, Section No.17 Ulhasnagar, Dist: Thane

4. Ganesh @ Kalu Prataprao Jeswani, age 22 years, R/o. Camp No. 3, Barrack No.1177 Forward Line, Ulhasnagar Dist: Thane

5. Shankar Dhirumal Rohida age 22 years, R/o. Camp No.3 Barrack No 838/8, Ulhasnagar Dist : Thane ..Respondents (Original Accused)

Mr. D. R. More, APP for the Appellant - State.

Mr. Ganesh Gole for the Respondents - Original

Accused.

CORAM : D. G. DESHPANDE, &
S. R. SATHE, JJ.

DATE : 15TH JANUARY, 2007.

ORAL JUDGMENT : (Per: D. G. DESHPANDE, J.) :

1. Heard Mr. More APP for the State and Mr. Gole counsel for the Accused. Both the Appeals are filed by the State against the acquittal of the accused for offences under Sections 147, 148, 336, 354, 302 read with Section 149 of IPC or in ther alternative under sections 336, 354, 302 read with 34 of I.P.C. It appears that two sessions cases were tried together i.e. Sessions Case No.702 of 1988 against accused Nos. 1 to 3 as accused Nos. 4 and 5 were absconding. Accused Nos. 4 and 5 were arrested later on and separate charge sheet was filed against them and Sessions Case No. 703 of 1988 was filed, therefore it was a joint trial, concluded by a common judgment. Out of the five accused, accused No.1 Bhoju @ Bhajanlal was convicted under Section 323 of IPC and sentenced to suffer R.I. for one year and fine of Rs.100/- in default R.I. for 15 days.

2. The case of the prosecution as per the FIR is that Vinod had a younger sister by name Manju, who used to attend tution classes conducted in Section No. 17 at Ulhasnagar daily in the evening. Some road romios used to tease her while going and coming back from tution class. Manju made a complaint to her married sister Indu who was residing in that same area. Indu therefore accompanied Manju for few days and during that time nobody teased her. Thereafter Indu stopped to accompany Manju to the tution class.

3. On 29.3.1988 Manju alone went to the tution class and after her tution was over while she was returning some one hold her hand and outraged her modesty. Therefore, on the next day i.e. on 30.3.1988 Manju’s elder sister Indu, her brothers Narendra and Vinod accompanied Manju upto the tuition class. They were accompanied by one Abhijit Savant the friend of Vinod. All of them again went to bring her back from the tution class. While they were near one General Store, these accused were there. When they saw Manju, one of them uttered "Red Rose Aayi, Deni Ladaki Aayi". This was their

manner of teasing Manju. Therefore, Manju's elder brother Narendra questioned accused whey they were teasing Manju. There was exchange of hot words between Narendra and these accused. Narendra was held by them. He was man-handled by them. His brother Vinod and others tried to go towards him to help him but soda water bottles were being thrown at them from the General Stores. Narendra started running but he was made to fall down by obstructing his way by one of the accused and then Mahesh - the absconding accused is alleged to have hit Narendra on his right side buttock from the back causing serious bleeding injury. Narendra collapsed and the assailants ran away.

4. Thereafter Narendra was taken to the hospital by Vinod but while under treatment he died and the complaint came to be lodged by Vinod. Offence was registered, spot panchnama was drawn, statement of witnesses were recorded, inquest panchnama and post mortem was conducted. The accused were arrested. Two identification parades were held and then charge sheets came to be filed.

5. Charges under Sections 147, 148, 336, 354,

302 read with 149 or in the alternative under Sections 336, 354, 302 read with 34 of IPC were framed against the accused. Their defence was of total denial. Prosecution examined in all nine witnesses. The trial court disbelieved the prosecution case and acquitted the accused and hence these appeals.

6. It was urged by APP Mr. More that the acquittal of the accused by the trial court is totally erroneous and perverse. The trial court according to him fail to see that there were as many as six eye witnesses to the incident who had given consistent ocular evidence fully supported by medical evidence and spot panchnama and also the full proof evidence of the identification parade and identification in the court, and, therefore, acquittal of the accused was totally unjustified. He therefore prayed that the accused should be convicted for the offences committed and in any case they should be convicted under Section 325, read with 147, 148 and 149 of the IPC. He contended that even though main assailant Mahesh was absconding that could not be a reason for upholding the acquittal.

7. On the other hand, Mr. Gole counsel for the accused contended that two of the eye witnesses i.e. P.W. 4 Dilip and P.W. 6 Manthan were found by the trial court as chance witnesses and therefore unreliable and so far as the remaining eye witnesses were concerned, there were number of inconsistencies and number of contradictions in their evidence. He also contended that the identification parades were held belatedly, they were not according to the norms prescribed and further medical evidence also did not support the prosecution, and, therefore, according to him, the acquittal was fully justified and no interference was called for. In view of these submissions, we have to find out whether the appeals require interference or not.

8. It is to be noted that P.W. 1 Vinod, P.W. 2 Manju, P.W. 3 Indu and P.W. 5 Abhijit are the important witnesses for the prosecution because Manju is a victim girl who was subjected to teasing for quite a long time. Indu her elder sister accompanied Manju for many days to have a check upon those road side romios and P.W. 1 Vinod and P.W. 5 Abhijit are persons who accompanied Manju on the

fateful day along with deceased Narendra. P. W. No. 4 Dilip and P.W. No.6 Manthan are also eye witnesses relied upon by the prosecution.

9. So far as Narendra is concerned, it is necessary to see what is the nature of the injuries received by him, he is the victim who died as a result of the assault by the accused according to the prosecution. P.W. 9 is Dr. Gaidhande. He has proved the post mortem report Exhibit 29. Dr. Gaidhane has stated that on 30.3.1988 at about 8.15 p.m. Narendra was brought to the Central Hospital, Ulhasnagar, where he was serving as a Medical Officer. Narendra was brought with history of assault. Doctor started giving him treatment, but the Narendra expired within 10-15 minutes and Narendra was unconscious when brought. Next day post mortem examination was conducted and Dr. found the following injuries :

> **"1. Stitched wound right buttock, inferior aspect just medial to centre, 1" in length.**
>
> **2. Contusion right lateral aspect of the chest superior region, about 2 1/2" in diameter.**
>
> **3. Contusion right side axillary region, in defined edges about 6" x 2".**

4. Abrasion right hand dorsal aspect, second falange of middle and index fingers about 1/2".

5. Abrasion left palm. Abrasion with clotted blood left palm thinner eminence about 3/4".

6. Abrasion left hand dorsal middle and ring finger. Second falange about 1/2".

7. Abrasion left knee, infrapatelar i.e. superior aspect of leg."

Doctor found in addition to the aforesaid external injuries, following internal injuries:

"1. Fracture of 4th ribs, posterior lateral aspect right side. Pleura is torned at the fracture site. Both lungs posterial lobe were edematous inflamed. Right lung torned in the fracture side 1 1/2" x 1" x 1" congested. Other lobes deflected, pale, left side of heart was partially empty. Haemorrhage was found in posterior lobes.

2. Abdomenal cavity was full of blood about 500 Ml. stomach contained about 600 gms. undigested food."

So far as injury on buttock is concerned, it was described in detail by the Dr. as under:

"Deep penetrating stab wound, extending from right side buttock corresponding to injury No.1 running upwards in the pelvic cavity cutting right side palvic floor musscle running into the pelvic cavity. cutting ilac vessel from posterior aspect with sharp edges 1/2" x 1/2" (of vessel plus muscle) with huge collection of blood in pelvic cavity about 40 p cc. This entire injury was 1" x 3/4" to 1", depth 6 1/2" deep penetrating. The injury was caused by sharp

cutting object."

The cause of death according to Dr. Gaidhane was cardio respiratory failure due to shock and haemorrhage and due to injury mentioned in column Nos. 17, 20 and 21 of the post mortem notes Exhibit 29.

10. Dr. further opined that injury No.1 in Column No. 17 could be caused by sharp cutting weapon and it was sufficient in ordinary course of nature to cause death. So far as contusions are concerned, he stated that they could be caused by kicks and fist blows and abrasions could also be caused in the same manner. According to him injury No.1 in column No. 17 coupled with the internal damage was sufficient in ordinary course of nature to cause death. There cannot be any dispute that Narendra died a homicidal death. The evidence of the doctor shows that 4th ribs of Narendra was fractured and pleura is torned at the fracture side and the injury on the buttock has resulted in cutting major blood vessel and therefore cause of death are these internal injuries. Doctor was subjected to cross-examination. He admitted that

injury at Sr. Nos. 5 to 7 are possible due to fall on the surface of road under construction so also injury Nos. 2 and 3.

11. Coming to the ocular evidence, the first witness is P.W. 1 Vinod - brother of Manju. Since evidence of P.W. 1 Vinod, P.W. 2 Manju and P.W. 3 Indu is almost identical, we will summarise the evidence of Vinod with the versions in the evidence of other two witnesses about the incident. Vinod has stated that 15 days before the incident Manju complained that some boys near Today Photo Studio teased her and therefore Indu had started accompanying Manju for about 7 to 8 days. Similar is the version of Indu in this regard. He also stated that when Indu was accompanying Manju, nobody teased her and therefore Manju started going alone. Vinod has further stated that on 29.3.1988 when she was returning from the tution, one of the boys who used to tease her caught her hand in Section 17 of Ulhasnagar and teased her. Therefore, on 30.3.1988 at 6.00 p.m. Vinod, Narendra, Indu and their friend Abhijit accompanied Manju to the house of tution teacher Mr. Thakur. They reached her there came back and again all of them went to fetch her back.

12. While they were returning back these boys teased Manju saying "Here comes Red Rose". They were 7-8 in number. Then Narendra went to question those boys. All of them who were sitting on something like a cot by the right side of the road started quarrelling with Narendra, they caught hold of him and started beating him (The age of Vinod on the date of deposition is 19 years, the incident is of 1988, therefore he was 18 years at that time). Then Vinod, Abhijit, both the sisters Indu and Manju rushed to the rescue of Narendra. 2-3 boys went to the General Store nearby and threw soda water bottles, they therefore moved a little.

13. Thereafter, Vinod states that Narendra was trying to wriggle out from the assailants. He managed to escape and all of them started running when they reached the road, the assailants were chasing him. One of them caught Narendra and pushed him to the ground and then inflicted a blow with a weapon like knife on Narendra’s right buttock. Other assailants came and started hitting Narendra with kicks and knees. Narendra was profusely bleeding and then all of them ran away.

14. He has identified accused No.1 Bhoju @ Bhajanlal and stated Mahesh absconding accused is not present. In the parades that were held subsequently, he identified accused Nos. 2, 3, 4 and 5. Attempt is made in the cross-examination to get particulars of the accused who hit Narendra on his private parts because this witness has stated that after this the boys caught hold of Narendra, they hit on his private parts with knees. Doctor in his evidence has admitted that he did not find any injuries to private parts. In this background, Mr. Gole tried to contend that story of beating Narendra on private parts is false. Therefore, according to him the evidence of Vinod becomes suspicious. We are not in agreement with this submission. At the most this can be treated as an exaggeration or omission nor sufficient to create doubt about the veracity of the witness.

15. Further attempt in the cross examination is to show that why no enquiry was made by this witness about boys teasing Manju, why no complaint was lodged to the police and why no description was given of those persons as well as the assailants.

This also cannot be considered in favour of the accused because the primary object of Vinod his brother, sister Indu was to give protection to Manju. Generally, no such complaints are lodged about teasing by family members because of fear of retaliation and the matter is tried to be settled amicably.

16. Further, the evidence of Vinod is tried to be criticised on the ground that even though Narendra was being assaulted none of them intervened. If we look at the age of this witness he was 18 years at the time of the incident and therefore when he found that Narendra, his brother was being assaulted by so many persons it was but natural for him not to interfere for fear of being assaulted. So far as identification of accused by this witness in the parade is concerned, a suggestion was given to him that he identified accused only because he had seen them before holding the parade. That suggestion was slightly denied by this witness. Certain omissions are brought out in the evidence of this witness about not mentioning to the police that these persons were sitting on cot and there is omission about accused chasing

Narendra, but that is also not important.

17. Next witness is P.W. 2 Manju. She is the victim girl. She has stated about the manner in which she was teased by the boys in Section 17. Her complain to Indu, Indu accompanying her for 8 days, no teasing during this period, then holding of her hand by one of the boys on 29.3.1988, her informing about it to the family members and then on 30.3.1988 i.e. the date of the incident, her brothers and sister accompanied her along with Abhijit. About this incident she has stated that her class was over by 7.30 p.m. Her brothers Narendra and Vinod, sister Indu and Abhijit had come to take her back, they came near Mahadeo Mandir. 9 - 10 boys were sitting in front of General Stores on a cot, these boys started teasing on seeing her, they said "Red Rose has come". Narendra went to question them. Some of the boys caught Narendra from behind, other boys caught hold of his collar and hit on his private part when Manju and others went to rescue Narendra some boys threw soda water bottles. These bottles were picked up from the General Store and therefore they could not rescue Narendra.

18. She also further stated that thereafter they retreated. Narendra started running in order to rescue himself. Some boys ran after him. One of the boys obstructed Narendra with leg. Narendra fell to the ground and then he was hit by one of the boys on right buttock with an object like weapon. He suffered injury. Other boys also came there and hit Narendra with kicks and fist blows and then all of them ran away.

19. So far as identification is concerned, she has identified accused No.1 as a person who was one of the assailants and then in the identification parade held on two different dates she identified accused Nos. 2, 3, 4 and 5 as assailants and teasing her and attacking her brother. The persons teasing are accused Nos. 4 and 5.

20. At this juncture, it is necessary to see the spot panchnama. It is Exhibit 14. It was taken in evidence because the defence admitted the genuineness of the document. This panchnama shows that pieces of broken glasses of soda water bottles were lying on the spot. Right foot slipper was also found and it is also mentioned that since

construction of the road was going on there was an earth and water on the road and hence blood stains were not visible.

21. Finding of pieces of soda water bottle strongly corroborate the story given by Manju and Vinod and other eye witnesses.

22. Evidence of Manju was criticised by Mr. Gole on the ground that there are omissions, contradictions and exaggerations. Firstly, it has to be noted that on the day of the incident, Manju was 15 years of age. Omission is relating to the incident of holding her hand on 29.3.1988 but she has stated that she did not tell Mr. Thakur teacher of the tution class about this incident, therefore, it does not amount to an omission. Manju was also asked in the cross examination whether she had told the Mamlatdar to hold identification parade about the roles played by the accused Nos. 2, 3, 4 and 5 but she stated that she did not remember whether she had told him about the role. Then, she has admitted that she did not describe 3-4 persons who hold the collar of Narendra but she had explained that since she was frightened she could not remember everything

properly.

23. Apart from proving certain minor omissions and contradictions as stated above, nothing is brought out in the cross-examination to disbelieve and discredit this witness. Even identification by this witness in the parade as well as in the court, has not been successfully challenged in the cross - examination. She denied the suggestion that she was first taken to the police station before the identification parade and that accused were shown to her.

24. Next witness is P.W. 3 Indu elder sister of Manju. She has supported Manju regarding teasing by the boys, her going with her for 8 days etc. She has also stated that on the date of the incident she along with Narendra, Vinod and Abhijit reached Manju to the tution class and they again went to take her back. At that time 8-9 boys were sitting in front of the General Store on a seat resembling a cot. They started teasing Manju by saying "here comes Red Rose". Narendra went to question them. The boys caught him from back side and front side. Some of them hit him on his private part with knees.

Narendra managed to save himself and ran to the road. Indu and others also ran with him. The boys chased them. One of them obstructed Narendra with legs and made Narendra to fell on the ground. Some of them were kicking and some were giving fist blows. They shouted for help and none came to the rescue and one of the boys hit Narendra on his right side buttock with an object like weapon. Thereafter also Narendra was beaten and then the boys ran away. She identified accused No.1 Bhoju. She also knew Mahesh Basantani - absconding accused and in the parade she had identified accused No.2 i.e. in the parade held on 10.5.1988. She could not attend the second parade as she was out of station. Though Indu is also subjected to cross - examination at length, nothing is brought out to create doubt about her story. Absolutely, there is no motive either for Manju or for Vinod or for Indu or for that matter to any of the other eye witnesses to falsely implicate these accused. In the cross - examination of Indu, no omissions or contradictions could be brought about with reference to her statement to the police. She therefore fully support the testimony of Vinod and Manju. She denied the suggestion that she identified accused No. 2 as he was seen earlier

at the police station.

25. Then there is P.W. 5 Abhijit, he had gone with Narendra, Vinod, Indu and Manju to reach Manju to the tution class of Mr. Thakur and to bring her back on 30.3.1988. In that regard he has stated that while returning boys started saying "here comes danny girl & Red Rose.". Narendra questioned the boys. The boys started beating him with hands and one of them hit Narendra on his private part. Then Abhijit and others went to the rescue of Narendra, Bhoju - accused No.1 hurled soda water bottles to them, therefore they retreated. After some time Narendra saved himself and came out of the lane, but boys made him to fell down and Mahesh - absconding accused gave a blow on the right buttock of Narendra. The injury started bleeding and on seeing blood all the boys ran away. This witness P.W. 5 identified accused no.1 in the court. He has stated that he could not attend the identification parade held on 10.5.1988 as he has gone to his native place but he participated in the identification parade held on 1.7.1988 and identified accused Nos. 4 and 5 as the assailants. In the cross-examination he was asked why he could not describe the assailants

about hurling of soda water bottles. Nothing more is brought out in the cross examination to discredit this witness.

26. Apart from the above, there are two more witnesses P.W. 4 and P.W. 6 Dilip Suleja and Manthan Pitale respectively. Evidence of these two witnesses however is disregarded by the court on the ground that they are chance witnesses. It may be so but the evidence that has been adduced by the prosecution of the witnesses Vinod, Manju, Indu and Abhijit strongly corroborate the entire prosecution case. They have no animus or enmity with any of the accused. They have attributed role to accused properly. Their story is consistent and they identified the accused not only in the two parades but also in the court.

27. So far as identification parades are concerned, Mr. Gole tried to contend that there was an inordinate delay in holding the identification parade. He drew our attention to the fact that even though the incident has occurred on 30.3.1988, the identification parades were held on 10.5.1988 and 1.7.1988. It is to be noted here that accused No.

2 was arrested on 16.4.1988 and accused No.3 was arrested on 29.4.1988, therefore parade was held on 10.5.1988. Accused No.4 was arrested on 15.6.1988 and accused No. 5 was arrested on 27.6.1988, therefore the parade was held on 1.7.1988.

28. According to Mr. Gole, however both the parades were held belatedly and therefore they create doubt about the veracity and authenticity of the parades. If evidence of both the Magistrates is taken into consideration coupled with the evidence of I.O. it cannot be said that the delay was sufficient to frustrate the parades.

29. Next submission that was made in respect of the parades, was that even though SEM knew that all the boys were Sindhis he did not select Sindhi dummies.

30. The prosecution has examined P.W. 7 Shrirang Deshmukh to prove the identification parade held on 10.5.1988. He has given evidence at length and also proved the Memorandum of parade. There is nothing in the cross-examination to reject the evidence of parade at all.

31. Our attention was drawn by Mr. Gole to the admission of the witness in paragraph 3, wherein he has stated that he called for dummies through his peon. Mr. Gole contended that it was the job of SEM to select the dummies and this job could not be entrusted to the peon. We are in disagreement with this submission because the witness never said that the dummies were selected by peon, he merely sought help of peon to call dummies. No more illegalities or irregularities were pointed out to us in holding both the parades.

32. Upon considering all the facts stated above, it is clear that the prosecution has succeeded in proving that the accused had teased Manju earlier. They had teased her on the day of the accident. They assaulted Narendra and when attempts were made to save him by other four witnesses named above, they threw soda water bottles to deter them from coming to the rescue . Homicidal death of Narendra is proved and the prosecution has also proved that all the accused acquitted by the trial court had participated in the incident.

33. Therefore, in this background, the appeals of the State are required to be allowed. However, the question is which offences can be said to be proved against the accused. Admittedly, right from the beginning the case of the prosecution is participation of more than five persons in this rowdy business. Therefore, Sections relating to unlawful assembly i.e. 147, 148, 149 are attracted. Mr. Gole however tried to contend that the blow on the buttock of Narendra was given by absconding accused Mahesh. The weapon of assault has not been seized by the police and the witnesses are not certain as to what was the nature of the weapon. He therefore contended that these accused cannot be held responsible for causing the death of Narendra.

34. On the other hand, learned APP contended that once the prosecution succeeds in proving the existence of an unlawful assembly for everything, all members of the unlawful assembly can be held guilty and are required to be held guilty.

35. We find considerable force in the submissions of the learned APP. There are two injuries to Narendra, one is a fracture on his rib,

that may be due to assault or that may be due to pushing him on the road that was under construction by the accused, and, the second injury is also on the back side of the buttock that resulted in serious blood loss but causing that injury on the buttock, in particular, will not bring the case under Section 302 because there may not be any intention to commit murder or any knowledge that such an injury would cause death of Narendra. Therefore, that injury to Narendra being a grievous hurt the accused are required to be held guilty under Sections 148, 148 and 149 read with 325 of IPC. So far as teasing and offence under Section 354 is concerned, Manju has identified accused Nos. 4 and 5 as the persons teasing her and attacking her brother.

36. The common object of these accused was to tease Manju and to deter Narendra or any one coming to her rescue from obstructing their illegal and immoral activity, and then to cause grevious hurt and therefore when Narendra questioned them he was assaulted in the manner as stated above.

37. Mr. Gole relied upon the judgment of

Supreme Court reported in **AIR 1972 Supreme Court 1221 Kshudiram Majhi vs. State of W.B.** In that case appellant Kshudiram and ten others were charged under Section 304 and S. 304 r/w Section 149 of IPC. Three of them were charged under Section 323 for causing injuries to the neighbour of victim Madhusudan. The trial court convicted appellant Kshudiram under S. 326 and eight others under section 326 read with 149 of IPC and six of these eight persons were also convicted under Section 323. Two of the appellant's alleged associates were acquitted. Appeal was preferred to the High Court. The High Court was not satisfied that the appellants before it other than Kshudiram could be said to have shared any common intention with the appellant. Therefore, others were acquitted but conviction of Kshudiram was upheld under Section 326 and sentence of three years rigorous imprisonment imposed upon him. The Supreme Court dismissed the appeal of Kshudiram. We fail to understand how this case helps the present accused because Mr. Gole has pointed out the head note of this reported judgment, which is as under :

> **"Penal Code (45 of 1860), S. 149 - UNLAWFUL ASSEMBLY - GRIEVOUS HURT - Offence of**

grievious hurt committed by a particular accused not in prosecution of common object - other accused persons held not liable."

This judgment is of no help to the accused. Because this is not a case where other accused did not share the common intention. We have noted above that the common intention of all the accused was to tease Manju and even if Manju does not say or identified all those accused as persons teasing her on earlier occasion, she has assertively identified accused nos. 4 and 5 as persons teasing her on that day. Therefore, it can be inferred that this teasing was continuously going on and unlawful assembly was formed which was there, for that purpose the accused obstructed Narendra and assaulted him when he questioned. Even if it is accepted for the sake of argument that these accused had not teased Manju on earlier occasions, it is clear on that day when she was returning from her tution class along with her brothers, sister and Abhijit she was teased by accused Nos. 4 and 5 who were along with the group and when Narendra went there to question, immediately all the accused with common intention assaulted Narendra. Therefore, it stands proved beyond doubt that the accused formed an unlawful

assembly and then they assaulted Narendra in the manner stated above.

38. On the point of sentence, Mr. Gole relied upon two judgments, one of the Supreme court reported in **2002 All MR (Cri) 2270 (S.C) Bhima @ Bhimarao Sida Kamble & Ors. vs. State of Maharashtra** and the other judgment of this Court reported in **2006 All MR (Cri) 25 Asimuddin @ Assu s/o. Hakimuddin & Ors. vs. State of Maharashtra**. He contended that when the incident occurred the accused were young, the incident is of 1989, after their acquittal by the trial court the accused have married and are living happy life, there are no complaints of any type against them during this period, and, therefore, lenient view should be taken and minimum sentence is imposed.

39. On the other hand, learned APP contended that looking to the gravity of the offence and fact that all this arose out of the illegal activities of the accused in teasing Manju a girl of tender age of 15 years, deterrent sentence should be awarded.

40. We have given our anxious consideration to

the submissions made by both the sides. In our opinion, maximum sentence of three years with heavy fine would be sufficient. Therefore, we pass the following order:

ORDER

. Both the Appeals are allowed.

. Acquittal of all the accused is set aside and the conviction of accused No.1 under Section 323 is also set aside.

. All the accused are held guilty under Sections 147, 148, 149, 325 and 354 of IPC.

. All the accused are convicted under Section 147 of IPC and are sentenced to suffer R.I. for one year with fine of Rs.500/- (Rupees Five Hundred) each in default R.I. for one month each.

. All the accused are convicted under Section 148 of IPC and are sentenced to suffer R.I. for one year with fine of Rs.500/- (Rupees Five Hundred) each in default R.I. for one month each.

. All the accused are convicted under Section 325 of IPC and are sentenced to suffer R.I. for three years with fine of Rs.10,000/- (Rupees Ten Thousand) each in default R.I. for six months each.

. All the accused are convicted under Section 354 r/w 149 of IPC and are sentenced to suffer R.I. for one year with fine of Rs.500/- (Rupees Five Hundred) each in default R.I. for one month each.

. All the substantive sentences to run concurrently.

. All the Accused to surrender within a period of four weeks from today. If they fail to surrender, the trial court to take appropriate action against them under Criminal Procedure Code and send them to jail for undergoing sentence. Their Bail bonds stands cancelled.

. If the fine is recovered, 3/4th of the same shall be given to the heirs of deceased, as compensation.

(S.R. SATHE, J.) **(D.G. DESHPANDE, J.)**